

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

A.H. Lundberg Associates, Inc. and  
Lundberg, LLC,

Plaintiffs,

v.

TSI, Inc.,

Defendant.

Case No. 14-CV-01160-JLR

**PRETRIAL ORDER**

**Federal Jurisdiction**

This case originally included a Lanham Act claim (*see* Dkt. No. 1), so the Court had subject matter jurisdiction under 28 U.S.C. §1331 and §1338(b). Although the Lanham Act claim was dismissed, the Court has maintained supplemental jurisdiction under 28 U.S.C. §1367(a).

**Claims for Relief**

**Lundberg will pursue the following claims at trial:**

1. Lundberg claims that confidential and proprietary information, including engineering drawings, related to its wet electrostatic precipitator ("WESP") qualifies as trade secrets and that TSI misappropriated those trade secrets through improper acquisition, possession, and/or use.

PRETRIAL ORDER - 1  
CASE NO. 14-CV-01160-JLR

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2. Lundberg claims that it had a valid confidentiality agreement with TSI. Lundberg also claims that Gary Raemhild and Jarrad Markley, two former Lundberg engineers who went to work for TSI, had confidentiality agreements with Lundberg. Lundberg claims that TSI breached its confidentiality agreement with Lundberg and induced Raemhild and Markley to breach their confidentiality obligations to Lundberg.

3. Lundberg claims that TSI aided and abetted Raemhild to breach his fiduciary duty to Lundberg. Specifically, Lundberg claims that TSI struck an employment deal to hire Raemhild as early as February 2012 but allowed Raemhild to stay employed at Lundberg until August 2012. Lundberg claims that, before and during this "overlap period," TSI solicited and Raemhild sent to TSI Lundberg's confidential information and breached his duty of loyalty by working for TSI's benefit.

4. Lundberg claims that TSI was unjustly enriched by possession and use of Lundberg information.

5. Lundberg claims that TSI owes damages in the form of: Lundberg's lost profits, disgorgement of TSI's profits, and TSI's unjust enrichment <sup>only</sup> (both for use of the trade secret (e.g., the development costs TSI avoided by the misappropriation) ~~and for use of the non trade secret information~~). Lundberg also claims that TSI owes Lundberg exemplary damages and attorneys' fees for TSI's willful misappropriation of Lundberg's trade secrets.

6. Lundberg claims that TSI must be enjoined from continued use of Lundberg's trade secrets and other confidential information.

#### Affirmative Defenses

**TSI will pursue the following affirmative defenses at trial:**

~~1. Lundberg's claims are barred by the doctrine of Laches due to Lundberg's long delay in asserting it claims, which has prejudiced TSI and its ability to defend against those claims.~~

~~[OBJECTION: Lundberg objects to any jury instruction and presentation of this defense by TSI. There is no evidence that supports a laches defense for TSI. Lundberg could not locate a~~

PRETRIAL ORDER - 2  
CASE NO. 14-CV-01160-JLR

251608.0049/6738694.1

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~~case under Washington law that applied laches to a trade secrets claim because laches is merely an equitable defense. Further, because Lundberg brought its claims well within the applicable statutes of limitations, there is a strong presumption that the extraordinary remedy of laches does not apply. Further, laches generally does not apply to claims for prospective injunctive relief.]~~

2. Any restitution award to Lundberg for unjust enrichment is limited to TSI's profits that are attributable to the components in the WESPs sold by TSI that constituted Lundberg's trade secrets.

3. Lundberg has brought this action in bad faith for the improper purpose of chilling fair competition and to gain a competitive advantage.

#### **Admitted Facts**

1. Prior to going bankrupt in 2002, Geoenergy International Corporation ("Geoenergy") designed and sold air pollution equipment, including Wet Electrostatic Precipitators ("WESP"). WESPs remove fine pollutant particles, like dust, smoke, or liquid droplets from gas flows.

2. Steve Jaasund's company, Jaasund AirTech, helped Geoenergy with the operation of its first full-scale WESP installation.

3. Steve Jaasund and Gary Raemhild joined Geoenergy in 1988.

4. Jarrad Markley joined Geoenergy in 1992. Jaasund, Raemhild, and Markley were all involved in making design changes to Geoenergy's WESP to address deficiencies they identified in the field.

5. Steve Jaasund, Gary Raemhild, and Jarrad Markley all worked at Geoenergy until it went bankrupt in 2002.

6. The Geoenergy bankruptcy Trustee sold Geoenergy's assets to at least three companies: Western Pneumatics, Inc. ("WPI"), TurboSonic Inc. (now B&W Megtec), and Lundberg. Lundberg acquired the "Project Files" and trademarks of Geoenergy International Corporation ("Geoenergy.") The Project Files included the design of a WESP and RTO.

1           7.     The Geoenergy "Project Files" and the original designs of Geoenergy as  
2 contained therein in 2002 are not being claimed by Lundberg to be trade secrets.

3           8.     Following the Geoenergy bankruptcy, in December 2002, Steve Jaasund and  
4 Gary Raemhild joined Lundberg. Jarrad Markley joined Lundberg in January 2003.

5           9.     When they were hired, Raemhild and Markley signed acknowledgement forms  
6 confirming their agreement per the terms of Lundberg's employee handbook to keep  
7 Lundberg's proprietary information confidential and to only use such information "within the  
8 office and in connection with Company projects."

9           10.    After joining Lundberg, Raemhild and Markley, along with others at Lundberg,  
10 refined the WESP design that Lundberg had purchased out of the Geoenergy bankruptcy, as  
11 well as Lundberg's Regenerative Thermal Oxidizer ("RTO") and other air pollution control  
12 ("APC") product designs.

13           11.    TSI is in the business of designing, engineering and supplying drying systems to  
14 the wood products industry, including dryer islands, consisting of a furnace, a dryer and APC  
15 equipment. TSI did not offer TSI APC equipment until 2012.

16           12.    The first project that Lundberg and TSI worked on together was Green Circle  
17 beginning around 2007, where Lundberg supplied the WESP and RTO, and TSI supplied the  
18 wood dryer.

19           13.    Thereafter, from 2008 to 2012, Lundberg provided TSI with numerous written  
20 proposals to supply APC equipment for use in TSI's other wood dryer projects in response to  
21 TSI's requests for quotes ("RFQs") and general requests for information.

22           14.    In March 2009, Lundberg eliminated Markley's position due to the economic  
23 recession and Markley was laid off. At that time, Markley signed a Separation and Release  
24 Agreement in which he confirmed his continuing obligation not to use or disclose Lundberg's  
25 confidential information related to Lundberg's "client, customers, personnel, operations,  
26 strategies, financial or other proprietary information that is not otherwise available to the  
27 general public."

PRETRIAL ORDER - 4  
CASE NO. 14-CV-01160-JLR

251608.0049/6738694.1

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1           15. In 2009, TSI was awarded the contract to provide Georgia Biomass with an  
2 integrated "dryer island" system. TSI sub-contracted with Lundberg to provide the APC  
3 equipment for the Georgia Biomass dryer island project.

4           16. In November 2011, TSI was awarded the contract to provide a dryer island  
5 system to German Pellets. The German Pellets' contract provided that TSI would not begin  
6 work until German Pellets first made a substantial down payment. German Pellets delayed  
7 making its down payment.

8           17. TSI was engaged in employment negotiations with Raemhild and Markley in  
9 January 2012.

10           18. On May 8, 2012, TSI hired Markley.

11           19. It was standard practice for TSI to have confidentiality agreements with its  
12 suppliers, and at TSI's request, on July 30, 2012 Lundberg and TSI signed a non-disclosure  
13 agreement that was prepared by TSI.

14           20. On August 1, 2012, TSI received a substantial payment from German Pellets.  
15 Raemhild resigned from Lundberg on August 6, 2012, and began work at TSI's office on  
16 August 7, 2012.

17           21. After 2012, TSI secured dryer island projects with Enviva and Portucel, which  
18 also included APC equipment supplied by TSI.

19           23. Gary Raemhild died on March 21, 2014.

20           24. Lundberg filed suit against TSI on July 31, 2014.

21  
22                           **Plaintiffs' Facts Disputed by Defendant**

23           1. Steve Jaasund, through Jaasund AirTech, took over the operation of Geoenergy  
24 in 1988. Gary Raemhild also came to work for Geoenergy in 1988.

25           2. Raemhild signed a Confidentiality, Noncompetition, and Nonsolicitation  
26 Agreement with Lundberg to protect Lundberg's trade secrets and confidential information.

1           3.       From 2002 to the present, Lundberg spent several million dollars to change and  
2 develop its WESP and RTO designs through internal efforts and consultations and  
3 collaborations with third parties. Lundberg devoted hundreds of hours of time and massive  
4 efforts of its entire Geoenergy division and additional engineers to improving its air pollution  
5 control equipment to be more efficient and to achieve savings for customers.

6           4.       From 2004-2008, Lundberg collaborated with outside party PowerSpan to refine  
7 its WESP design.

8           5.       Since 2002, Lundberg has improved and otherwise changed its WESP and RTO  
9 designs from the Geoenergy designs.

10          6.       Lundberg protected its WESP designs using methods such as: requiring that  
11 employees sign confidentiality agreements, securing computer servers, requiring separate  
12 computer passwords, formatting documents to create additional protection, using non-  
13 disclosure and/or confidentiality agreements with suppliers and customers, labeling proposals  
14 and drawings with confidentiality blocks, limiting visitor access to conference rooms only, and  
15 shredding confidential information.

16          7.       Lundberg also included confidentiality language on proposals, drawings, and  
17 diagrams sent to TSI.

18          8.       During the course of working together, Lundberg, mainly through Gary  
19 Raemhild, shared Lundberg's trade secrets and confidential information with TSI. Lundberg  
20 would never have shared this information if it viewed TSI as a competitor rather than as a  
21 customer or business partner.

22          9.       To facilitate providing German Pellets with a quotation, TSI obtained a  
23 quotation from Lundberg for the WESP and RTO. Thus, Lundberg's APC system was to be a  
24 part of TSI's dryer island.

25          10.      In June of 2011, Raemhild told TSI that he intended to leave Lundberg. At that  
26 time, TSI began to consider offering its own APC equipment.

1 11. After learning that Raemhild intended to leave Lundberg, TSI began to consider  
2 offering Raemhild employment. Starting in June of 2011, TSI personnel began discussing  
3 possible employment opportunities with Raemhild and obtained a copy of Raemhild's  
4 confidentiality agreement with Lundberg.

5 12. In December of 2011, TSI discussed the possibility of supplying APC  
6 equipment both internally and with Western Pneumatics, Inc. TSI indicated that it intended to  
7 hire engineers who had experience in the APC equipment field.

8 13. In January of 2012, TSI continued negotiating terms for Raemhild's and  
9 Markley's employment with TSI.

10 14. By March of 2011, TSI and Raemhild had negotiated terms for his employment  
11 with TSI. TSI delayed hiring Raemhild until after it obtained a substantial payment from  
12 German Pellets.

13 15. While it was negotiating with Raemhild for his future employment with TSI,  
14 TSI continued to seek and obtain proposals, drawings, diagrams, and specifications for APC  
15 equipment from Lundberg, which were provided to TSI through Raemhild. This data exchange  
16 continued nearly through the date on which Raemhild left Lundberg and became employed at  
17 TSI.

18 16. TSI delayed hiring Raemhild until after it obtained a substantial payment from  
19 German Pellets. Within days of receiving the substantial payment from German Pellets, , TSI  
20 then contacted Raemhild to finalize his employment with TSI.

21 17. TSI entered into its Confidentiality Agreement with Lundberg as part of its  
22 standard practice with contractors and to clean up its paperwork. The Confidentiality  
23 Agreement formalized the already existing relationship among business partners.

24  
25 **Defendant's Facts Disputed by Plaintiff**

26 1. Geoenergy designed its WESP based on patents it had purchased out of  
27 bankruptcy from another company.

PRETRIAL ORDER - 7  
CASE NO. 14-CV-01160-JLR

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2. TSI decided to launch its own APC product line in August 2012, beginning with the German Pellets project. TSI obtained proposals from Megtech, Turbo Sonic and Lundberg to supply the WESP and RTO for the German Pellets project.

3. On September 27, 2012, TSI commissioned Western Pneumatics Incorporated (“WPI”) to design, fabricate and install the WESP and RTO for the German Pellets project, using design concepts developed by Markley and TSI consultant Neil Kemper, with oversight by Raemhild.

4. TSI did not have any Lundberg engineering drawings in its possession when it designed and had WPI build the APC equipment for German Pellets dryer island project.

### Issues of Law and Equity

The following are the issues of law and equity to be determined by the court:

1. Motions *in Limine*.
2. Evidentiary rulings at the time of trial.
3. Trial motions.
4. Jury instructions.
5. Injunctive relief for Lundberg.
6. Latches defense by TSI.
7. Post-trial motions.

### Plaintiffs' Witnesses

**Doug Giarde, President of Lundberg (c/o Lane Powell PC) – will testify**

-Lundberg purchase from Geoenergy; knowledge re Gary Raemhild and Jarrad Markley; Raemhild's position at Lundberg and incidents regarding misconduct; information Raemhild sent to TSI while employed by Lundberg; Raemhild's resignation; Markley's work for Lundberg and severance; technical expertise in a wide range of Lundberg technologies; Lundberg's customers and potential customers; Lundberg's project plans; Lundberg's work with Western Pneumatics, Inc.; Lundberg's relationship with TSI; harm caused to Lundberg by TSI's behavior; Lundberg's general history and business; specifics of Lundberg's design features (trade secrets); specific comparisons between Lundberg's designs and the designs of other air pollution control equipment manufacturers; and the length of time, amount of money,



1 testing, and research required to design air pollution control equipment; methods of protecting  
2 Lundberg's information; reports from customers and potential customers re TSI's systems

3 **Steve Jaasund, Lundberg Geoenergy Product Manager** (c/o Lane Powell PC) – will testify  
4 -knowledge re Gary Raemhild and Jarrad Markley; relationships with Raemhild and  
5 Markley from pre-Geoenergy to present; Jaasund AirTech and work with Geoenergy; Raemhild  
6 and Markley's work at Lundberg; Raemhild's resignation from Lundberg; Markley's severance  
7 from Lundberg; Geoenergy technology and bankruptcy; technical expertise in Geoenergy  
8 products and technologies; technical knowledge of WESPs and other APC products; Lundberg  
9 technology and improvements; Lundberg's customers and potential customers; Lundberg's  
10 project plans; harm caused to Lundberg by TSI's behavior; specifics of Lundberg's design  
11 features (trade secrets); the way that Lundberg's design features differ from those described in  
12 public domain sources such as U.S. patents, engineering handbooks, published scientific  
13 articles, competitor brochures, competitor installations, and the original Geoenergy designs; the  
14 history of development of air pollution control products; specific comparisons between  
15 Lundberg's designs and TSI's designs; specific comparisons between Lundberg's designs and  
16 the designs of other air pollution control equipment manufacturers; and the length of time,  
17 amount of money, testing, and research required to design air pollution control equipment

12 **Patrick McDermott, Lundberg CFO** (c/o Lane Powell PC) – will testify  
13 -knowledge of Lundberg's historical profitability in the sale of WESPs, RTOs, and  
14 RCOs; damages analysis in the form of lost profits

14 ~~[OBJECTION: Defendant objects to McDermott's anticipated expert testimony on the~~  
15 ~~grounds that his opinions do not rest upon reliable foundation and will be unhelpful to the trier~~  
16 ~~of fact. See Fed. R. Evid. 702.]~~

17 **Giovanni Paradiso, Lundberg's technical expert** (c/o Lane Powell PC) – will testify  
18 -knowledge concerning the development and improvement of the Geoenergy WESP  
19 systems after Lundberg obtained intellectual property from Geoenergy, including the  
20 collaboration with PowerSpan; specifics of Lundberg's design features (trade secrets); the way  
21 that Lundberg's design features differ from those described in public domain sources such as  
22 U.S. patents, engineering handbooks, published scientific articles, competitor brochures,  
23 competitor installations, and the original Geoenergy designs; the history of development of air  
24 pollution control products; specific comparisons between Lundberg's designs and TSI's  
25 designs; specific comparisons between Lundberg's designs and the designs of other air  
26 pollution control equipment manufacturers; and the length of time, amount of money, testing,  
27 and research required to design air pollution control equipment.

24 ~~[OBJECTION: Defendant objects to Paradiso's anticipated expert testimony on the grounds~~  
25 ~~that his opinions do not rest upon reliable foundation, will be unhelpful to the trier of fact and~~  
26 ~~are not relevant under Daubert. See Fed. R. Evid. 702, Daubert v. Merrell Dow Pharms., Inc.,~~  
27 ~~509 U.S. 579, 587-88, 589-91 & 592 (1993).]~~

1 **David Bernier, Lundberg's technical expert** (c/o Lane Powell PC) – will testify

2 -knowledge concerning the development and improvement of the Geoenergy WESP  
3 systems after Lundberg obtained intellectual property from Geoenergy, including Lundberg's  
4 commercial designs and collaboration with PowerSpan; specifics of Lundberg's design features  
5 (trade secrets); the way that Lundberg's design features differ from those described in public  
6 domain sources such as U.S. patents, engineering handbooks, published scientific articles,  
7 competitor brochures, competitor installations, and the original Geoenergy designs; the history  
8 of development of air pollution control products; specific comparisons between Lundberg's  
9 designs and TSI's designs; specific comparisons between Lundberg's designs and the designs  
10 of other air pollution control equipment manufacturers; and the length of time, amount of  
11 money, testing, and research required to design air pollution control equipment

12 ~~[**OBJECTION:** Defendant objects to Bernier's anticipated expert testimony on the grounds~~  
13 ~~that his opinions do not rest upon reliable foundation, will be unhelpful to the trier of fact and~~  
14 ~~are not relevant under *Daubert*. See Fed. R. Evid. 702, *Daubert v. Merrell Dow Pharms., Inc.*,~~  
15 ~~509 U.S. 579, 587-88, 589-91 & 592 (1993).]~~

16 **Jarrad Markley** (c/o Carney Badley) – will testify

17 -knowledge re Geoenergy technology and bankruptcy, Western Pneumatics designs,  
18 technical knowledge of WESPs and other APC products, relationship between Lundberg and  
19 TSI, Lundberg and Markley confidentiality agreements, Lundberg and TSI technology, TSI's  
20 hiring of Markley and Raemhild, TSI's offering and sales of infringing Wet ESP and RTO  
21 technology

22 **Benny Teal** (c/o Carney Badley) – possible witness only

23 -knowledge re relationship between Lundberg and TSI, industry standards,  
24 confidentiality agreements and obligations, Lundberg's input to TSI customer proposals and  
25 bids, hiring of Markley and Raemhild, TSI's offering and sales of infringing Wet ESP and RTO  
26 technology

27 **Andrew Johnson** (c/o Carney Badley) – possible witness only

-knowledge concerning TSI's lack of personnel able to design and size air pollution and  
control equipment before TSI hired Raemhild and Markley, TSI's sales and marketing  
activities using Lundberg's confidential information, confidentiality obligations owed to  
Lundberg by TSI, Raemheld, and Markley, sales and marketing of TSI's APC equipment

**Zlatko "Zo" Savovic** (c/o Carney Badley) – possible witness only

-knowledge concerning TSI's lack of personnel able to design and size air pollution and  
control equipment before TSI hired Raemhild and Markley, TSI's sales and marketing  
activities using Lundberg's confidential information, lack of knowledge concerning  
confidentiality obligations owed to Lundberg by TSI, Raemheld, and Markley, knowledge  
concerning sales and marketing of TSI's APC equipment

**Defendant's Witnesses**

**Jarrad Markley, TSI's APC Chief Product Engineer (c/o Carney Badley)** –will testify  
-knowledge relating to his employment with Geoenergy and the design and development of its Wet ESP and RTO, his employment with Western Pneumatics and the design and development of its Wet ESP and RTO; the features and technologies used by other manufacturers of Wet ESPs and RTOs; his relationship and work with Steve Jaasund and Gary Raemhild; the design, research and development-, including development costs, and sales of TSI's Wet ESP and RTO, including Western Pneumatics' involvement in that process; differences between TSI's Wet ESP and the products manufactured by Lundberg for the Georgia Biomass project, and all areas of testimony identified by Lundberg.

**Benny Teal, President of TSI (c/o Carney Badley)** –will testify  
-knowledge relating to the design and development-, including development costs, and sales of TSI's Wet ESP and RTO; differences between TSI's Wet ESP and RTO and the products manufactured by Lundberg for the Georgia Biomass project; TSI's relationship with Lundberg and problems with Lundberg's performance on the Georgia Biomass project, including the Non-disclosure Agreement; hiring of Gary Raemhild and Jarrad Markley and the decision to bring the APC product line in-house; TSI's working relationship with Western Pneumatics, Inc. and its involvement in the design and development of TSI's Wet ESP and RTO; and all areas of testimony identified by Lundberg.

**Patricia Gillis, CFO of TSI (c/o Carney Badley)**-will testify  
-knowledge relating to TSI's accounting and financial information, cost of production and profits from sales of TSI's APC equipment.

[**OBJECTION:** Lundberg objects to Ms. Gillis' testimony to the extent it includes information not produced in discovery/incorporated into Paul Sutphen's supplemental report.]

**Zlatko "Zo" Savovic, TSI's Sale Director (c/o Carney Badley)**—will testify  
-knowledge relating to the development and sales of TSI's Wet ESP and RTO; differences between TSI's Wet ESP and the products manufactured by Lundberg for the Georgia Biomass project, his working relationship with Lundberg, including his working relationship with Gary Raemhild, and problems with Lundberg's performance on the Georgia Biomass project, the formation of project proposals, standard industry practice regarding solicitation and use of quotations, proposal and related information from vendors and suppliers and the proposes for and use of the information and project proposals submitted to TSI by Lundberg, including the results of those proposals, and all areas of testimony identified by Lundberg.

**Dr. Richard Martin, TSI's technical expert (c/o Carney Badley)**,-will testify  
-knowledge concerning the development and improvement of the TSI WESP systems; the way that Lundberg's design features compare with those described in public domain sources such as U.S. patents, engineering handbooks, published scientific articles, competitor brochures, competitor installations, and the original Geoenergy designs; the history of development of air pollution control products; specific comparisons between TSI's designs and Lundbergs's designs; specific comparisons between Lundberg's designs and the designs of other air pollution control equipment manufacturers; and the length of time, amount of money, testing, and research required to design air pollution control equipment.

[**OBJECTION:** Lundberg objects to Dr. Martin's testimony as discussed in Lundberg's motion  
PRETRIAL ORDER - 11  
CASE NO. 14-CV-01160-JLR

1 ~~in limine.~~

2 **Paul Sutphen, TSI's damages expert (c/o Carney Badley)-will testify**

3 -knowledge relating to Lundberg and TSI's financial information, inapplicability of  
4 Lundberg's lost profit damages theories, unjust enrichment damages analysis and alternative  
ways to measure damages.

5 ~~[OBJECTION: Lundberg objects to Mr. Sutphen's testimony as discussed in Lundberg's  
motion in limine.]~~

6 **Andrew Crain, computer forensics expert, Discovia (c/o Carney Badley)—will testify**

7 - knowledge relating to the search and recover of various electronically-stored  
8 information collected from TSI data sources, including laptop/desktop hard drive forensic  
9 images and exports of server-based e-mail files, and including the results of searches for  
information regarding Lundberg's allegations of Gary Raemhild's misappropriation of  
Lundberg's electronic information and files.

10 **Andrew Johnson, TSI's Vice President, (c/o Carney Badley) —will testify**

11 -knowledge relating to the development and sales of TSI's Wet ESP and RTO;  
12 differences between TSI's Wet ESP and RTO and the products manufactured by Lundberg for  
13 the Georgia Biomass project; working relationship with Lundberg and difficulties with  
14 Lundberg's performance on Georgia Biomass project, his working relationship with Gary  
Raemhild, the formation of project proposals, standard industry practice regarding solicitation  
and use of quotations, proposals and related information from vendors and suppliers and the  
proposes for and use of the information and project proposals submitted to TSI by Lundberg,  
including the results of those proposals; the decision to bring the APC product line in-house,  
and all areas of testimony identified by Lundberg.

15 **Neil Kemper, Independent Contractor, (c/o Carney Badley)—possible witness only**

16 - knowledge relating to the design, development and sales of TSI's Wet ESP; and the  
17 differences between TSI's Wet ESP and RTO and the products manufactured by Lundberg for  
the Georgia Biomass project.

18 **Richard Gobel, Engineer Manager, (c/o Carney Badley) – possible witness only**

19 - knowledge relating to Geoenergy technology, the development and sales of TSI's Wet  
ESP and RTO; differences between TSI's Wet ESP and RTO and the products manufactured by  
Lundberg for the Georgia Biomass project; his working relationship with Lundberg and the  
20 problems with Lundberg's performance on the Georgia Biomass project.

21 **Doug Giarde, President of Lundberg, (c/o Lane Powell) – will testify**

22 - knowledge regarding Lundberg's customers and potential customers and working  
relationships; Lundberg's treatment of its alleged trade secrets and personnel and general  
practices regarding protection of trade secrets, Lundberg's practices related to requests for bids  
and quotes, and joint proposals, and all areas of testimony identified by Lundberg.

24 **Steve Jaasund, Product Manager, (c/o Lane Powell) – will testify**

25 - knowledge regarding history of Geoenergy technology and Lundberg technology and  
customers; relationship with Gary Raemhild; industry and Lundberg's practices related to  
requests for bids and quotes, and joint proposals, and all areas of testimony identified by  
26 Lundberg.

27 **Jaymie Deemer, Market Development Manager, (c/o Lane Powell) – possible witness**

PRETRIAL ORDER - 12  
CASE NO. 14-CV-01160-JLR

251608.0049/6738694.1

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*Jur*



1 -knowledge regarding industry and Lundberg's practices related to bids and quotes, and  
2 joint proposals; Lundberg's customers and potential customers.

3 ~~[OBJECTION: Lundberg objects to Mr. Deemer's testimony as discussed Lundberg's motion~~  
4 ~~*in limine.*]~~

4 **Bob Smith, Lundberg**, (c/o Lane Powell) – will testify by deposition  
5 - knowledge regarding Geoenergy technology and issues that arose at Georgia Biomass  
6 regarding the Lundberg APC equipment, and the working relationship with TSI.

6 **Pat McDermott, Lundberg** (c/o Lane Powell) possible witness only  
7 - if allowed to testify, Mr. McDermott will testify as Lundberg's APC production costs.

7 **Rick Nicol, Western Pneumatics, Inc. ("WPI") – DECEASED** – possible deposition witness  
8 - Mr. Nicol may testify via deposition excerpt regarding the Geoenergy bankruptcy and  
9 the dispute and subsequent resolution with Lundberg, and development of TSI APC products.

9 **Roy Walters, WPI**, (c/o Rohn Roberts, WPI's attorney) – will testify  
10 - knowledge regarding the design and drawing for the TSI WESPs and RTOs, and  
11 differences between the Lundberg APC products and the TSI APC products and differences or  
12 similarities between the Geoenergy and WPE APC products and the TSI APC products.

12 **Bob Marshall, WPI**, (c/o of Rohn Roberts, WPI's attorney) – will testify  
13 - knowledge regarding the history of the development of the WPI/WPE APC products  
14 and industry practice and WPI practice relating to requests for proposals and for quotes and  
15 knowledge regarding the design and drawing for the TSI WESPs and RTOs, and differences  
16 between the Lundberg APC products and the TSI APC products and differences or similarities  
17 between the Geoenergy and WPE APC products and the TSI APC products.

15 **Kevin Coffman, WPI**, (c/o Rohn Roberts, WPI's attorney) – possible witness only  
16 - knowledge regarding knowledge regarding the history of the development of the  
17 WPI/WPE APC products and industry practice and WPI practice relating to requests for  
18 proposals and for quotes and knowledge regarding the design and drawing for the TSI WESPs  
19 and RTOs, and differences between the Lundberg APC products and the TSI APC products and  
20 differences or similarities between the Geoenergy and WPE APC products and the TSI APC  
21 products.

19 **Easel Roberts, 864-300-88222, Greenville, SC** – possible witness only  
20 - knowledge regarding development of certain designs at Geoenergy.

21  
22 **Plaintiffs' Exhibits**

23 Please see Addendum A for a list of Lundberg's exhibits. Plaintiff intends to present exhibits  
24 in electronic format to jurors.

25 **Defendant's Exhibits**

26 Please see Addendum B for a list of TSI's exhibits.

27  
PRETRIAL ORDER - 13  
CASE NO. 14-CV-01160-JLR

251608.0049/6738694.1

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**Plaintiffs' Reservation of Rights**

1  
2 1. Lundberg reserves the right to supplement its exhibit list in the event further  
3 discovery or expert witness testimony is received from TSI, including, without limitation, any  
4 testimony that is offered during the depositions of TSI's new technical and financial expert  
5 witnesses. Lundberg also reserve the right to add any exhibit not already listed that is included  
6 in any expert witness report or disclosure.

7 2. Lundberg reserves the right to supplement its exhibit list as additional exhibits  
8 are identified in final preparations in accordance with the applicable local rules and orders of  
9 this Court.

10 3. Lundberg reserves the right to split any exhibit identified into multiple exhibits.

11 4. Lundberg reserves the right to offer any exhibit identified by TSI.

12 5. Lundberg reserves the right to withdraw or not offer any exhibit identified  
13 above, and inclusion of any exhibit above is not a waiver of any objection to the admissibility  
14 of such exhibit.

15 6. Lundberg reserves the right to list additional possible witnesses as such  
16 witnesses are identified in final preparations in accordance with the applicable local rules and  
17 orders of this Court.

18 7. Lundberg reserves the right to call any witness identified by TSI.

19 **Defendant's Reservation of Rights**

20 1. TSI reserves the right to supplement its exhibit list in the event further discovery  
21 or expert witness testimony is received from Lundberg. TSI also reserve the right to add any  
22 exhibit not already listed that is included in any expert witness report or disclosure.

23 2. TSI reserves the right to supplement its exhibit list as additional exhibits are  
24 identified in final preparations in accordance with the applicable local rules and orders of this  
25 Court.

26 3. TSI reserves the right to split any exhibit identified into multiple exhibits.

27 4. TSI reserves the right to offer any exhibit identified by Lundberg.

1           5.       TSI reserves the right to withdraw or not offer any exhibit identified above, and  
2 inclusion of any exhibit above is not a waiver of any objection to the admissibility of such  
3 exhibit.

4           6.       TSI reserves the right to list additional possible witnesses as such witnesses are  
5 identified in final preparations in accordance with the applicable local rules and orders of this  
6 Court.

7           7.       TSI reserves the right to call any witness identified by Lundberg.  
8  
9  
10

11                               Respectfully submitted,

12           DATED: August 24, 2016

13                               LANE POWELL PC  
14

15                               s/ Tiffany Scott Connors

16                               Randall P. Beighle, WSBA No. 13421  
17                               Brian G. Bodine, WSBA No. 22414  
18                               Tiffany Scott Connors, WSBA No. 41740  
19                               Attorneys for Plaintiffs A.H. Lundberg Associates,  
20                               Inc. and Lundberg, LLC

21                               Lane Powell PC  
22                               1420 Fifth Avenue, Suite 4200  
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24                               Phone: 206-223-7000  
25                               Fax: 206-223-7107  
26                               Email: [beighler@lanepowell.com](mailto:beighler@lanepowell.com)  
27                               [bodineb@lanepowell.com](mailto:bodineb@lanepowell.com)  
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PRETRIAL ORDER - 15  
CASE NO. 14-CV-01160-JLR

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s/ Emilia L. Sweeney


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ORDER

The Pretrial Order is accepted and ordered  
filed.

Dated this 8th day of September, 2016

  
\_\_\_\_\_  
James L. Roberts  
U.S. District Court Judge

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury of the state of Washington that on August 24<sup>th</sup>, 2016, I caused to be served a copy of the foregoing Pretrial Order on the following person(s) in the manner indicated below at the following addresses:

Mr. Kenneth W. Hart	<input checked="" type="checkbox"/>	by <b>CM/ECF</b>
Ms. Emilia L. Sweeney	<input type="checkbox"/>	by <b>Electronic Mail</b>
Ms. Melissa J. Cunningham	<input type="checkbox"/>	by <b>Facsimile Transmission</b>
Carney Badley Spellman, P.S.	<input type="checkbox"/>	by <b>First Class Mail</b>
701 Fifth Avenue, Suite 3600	<input type="checkbox"/>	by <b>Hand Delivery</b>
Seattle, WA 98104-7010	<input type="checkbox"/>	by <b>Overnight Delivery</b>
Telephone: (206) 607-4174		
Facsimile: (206) 467-8215		
E-Mail: <a href="mailto:hart@carneylaw.com">hart@carneylaw.com</a>		
<a href="mailto:sweeney@carneylaw.com">sweeney@carneylaw.com</a>		
<a href="mailto:cunningham@carneylaw.com">cunningham@carneylaw.com</a>		
<a href="mailto:doyle@carneylaw.com">doyle@carneylaw.com</a>		
<a href="mailto:williams@carneylaw.com">williams@carneylaw.com</a>		
<a href="mailto:norgaard@carneylaw.com">norgaard@carneylaw.com</a>		

Dated this 24<sup>th</sup> day of August, 2016.

s/ Ann Gabu  
Ann Gabu  
Legal Assistant

PRETRIAL ORDER - 17  
CASE NO. 14-CV-01160-JLR

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